

BEFORE THE
Federal Communications Commission
 WASHINGTON, D.C. 20554

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Federal Communications Commission
 Office of Secretary

In the Matter of)

Amendment of Section 73.202(b))

Table of Allotments)

Vacant FM Allotment (Amherst, NY))

MB Docket No. _____

RM - _____

To: Secretary, Federal Communications Commission

PETITION FOR RULEMAKING

Youngshine Media, Inc. ("Youngshine"), by its attorneys and pursuant to Section 1.401 of the Commission's Rules,¹ hereby petitions the Commission to amend Section 73.202(b) of the Commission's Rules² to reserve Channel 221A, allotted to Amherst, New York, for noncommercial, educational ("NCE") use. As demonstrated herein, this Petition fully satisfies the criteria recently established by the Commission for NCE FM reservation requests.³ Specifically, as the attached Engineering Statement of David Dickmann of du Treil, Lundin and Rackley, Inc. ("Dickmann Statement") indicates, the proposed station would provide a second NCE service to at least 10% of its proposed service area, and that area consists of at least 2,000 persons. In addition, the Dickmann Statement establishes a rebuttable presumption that all reserved band NCE FM Class A channels are technically precluded from operating at the reference coordinates for Amherst. Youngshine also hereby states its intention to apply for a

¹ 47 C.F.R. § 1.401.

² 47 C.F.R. § 73.202(b).

³ See In the Matter of Reexamination of the Comparative Standard for Noncommercial Educational Applicants, Second Report and Order, 18 FCC Rcd 6691 (2003) ("Second NCE FM Report and Order"), at ¶¶ 34-40. See also Public Notice, "Media Bureau Opens Window to Permit Noncommercial Educational Reservation Showings for Certain Vacant FM Allotments," DA 03-2990, rel. Sept. 30, 2003.

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construction permit to build a NCE facility on this channel, in the event that the Commission grants this Petition.⁴

I. Grant of the Petition Would Result in the Provision of Sufficient Second NCE FM Service to Amherst, NY.

Pursuant to the Second NCE FM Report and Order, a reservation request must initially demonstrate that maximum class facilities at the proposed allotment site's reference coordinates would provide a first or second NCE service to at least ten percent of the population within the proposed station's 60 dBμ service area, and that such population is at least 2,000 persons.⁵ The instant petition satisfies this criterion.

Specifically, the Dickmann Statement establishes that there are 1,019,224 persons (based on the 2000 U.S. Census) within the 60 dBμ contour of a Class A FM station located at the allotment reference coordinates for Amherst.⁶ The Dickmann Statement further demonstrates that 330,135 of those persons (32.4%) would receive second NCE service.⁷ Thus, because over ten percent of the population within the 60 dBμ contour of a Class A station in Amherst would receive second NCE service (and that area has more than 2,000 people), the first criterion of the Second Report and Order is satisfied.

⁴ Youngshine is a New Jersey not for profit corporation. It does not hold any other media interests in its own right. However, it is one of three mutually exclusive applicants for a new reserved band NCE FM construction permit, which will operate on 88.1 MHz in Hopatcong, New Jersey. That proceeding is currently pending at the Commission.

⁵ Second NCE FM Report and Order at ¶ 34.

⁶ Dickmann Statement at 1 and Figure 1. The maximum FM facility at Amherst is Class A, in light of the fact that Channel 221, a Class A allotment, is the only FM channel currently allotted to that community. See § 73.202(b) of the Commission's Rules, 47 C.F.R. § 73.202(b) (FM Table of Allotments).

⁷ See Dickmann Statement at 1 and Figure 1.

II. Amherst is Technically Precluded From Receiving First or Second NCE FM Service in the Reserved Band.

The Second NCE FM Report and Order also requires a reservation request to establish a rebuttable presumption that the proposed community is technically precluded from receiving a first or second NCE service in the reserved band. That showing is required to be based on a circle, centered in the proposed community of license and drawn with a radius one kilometer less than the distance to the predicted 60 dB μ signal contour of a maximum same-class facility. The showing must then establish that no rule-compliant same-class facility could be authorized at either: (a) *maximum* height above average terrain (“HAAT”) and effective radiated power (“ERP”) on any reserved band channel at four equally-spaced locations on the circle; and (b) *minimum* antenna HAAT and ERP on any reserved band channel at the reference coordinates for the community of license.⁸ The instant petition satisfies this criterion as well.

As described in the Dickmann Statement at 1-3, no rule-compliant *maximum* Class A facility⁹ could be authorized at any of the four equally-spaced locations on the circle.¹⁰ At each point, Mr. Dickmann investigated whether a new NCE facility would cause prohibited contour overlap with respect to any licensed or authorized *NCE FM* facilities in the reserved band, based on criteria set forth in sections 73.509 and 73.313 of the Commission’s rules,¹¹ and with respect

⁸ Second NCE FM Report and Order at ¶ 35.

⁹ Section 73.211(b)(1) of the Commission’s rules establishes that the maximum facilities of a Class A FM station permit operating with an antenna located at 100 meters HAAT and with 6 kW of ERP. 47 C.F.R. § 73.211(b)(1).

¹⁰ Figure 2 accompanying the Dickmann Statement consists of a circle centered at the reference coordinates for Amherst (42-58-42 North Latitude; 78-48-00 West Longitude, based on the 2000 U.S. Census), with a 27 kilometer radius, which is one kilometer less than the distance to the predicted 60 dB μ signal contour of a maximum Class A facility. See Section 73.211(b)(1) of the Commission’s rules, 47 C.F.R. § 73.211(b)(1). The Figure also depicts four equally-spaced locations on that circle, beginning at 0 degrees True North.

¹¹ 47 C.F.R. §§ 73.509, 73.313.

to any *commercial* stations operating on Channels 221-223, just outside of the reserved band, pursuant to criteria set forth in sections 73.207 and 73.313 of the Commission's rules.¹² With respect to three of the points, Mr. Dickmann found either that prohibited overlap would occur or (with respect to Channels 219-220), a proposed new station would be short-spaced. With respect to the fourth point, Mr. Dickmann found that a NCE station could not be authorized by the Commission because such point is located in Canada. The results of his findings are summarized at Figure 3.

The Dickmann Statement also establishes that no rule-compliant same-class facility could be authorized at *minimum* antenna HAAT and ERP on any reserved band channel at the reference coordinates for Amherst.¹³ At that location, Mr. Dickmann determined, that either prohibited overlap would occur or, with respect to Channels 219-220, that a proposed new station would be short-spaced. The results of those findings are also summarized at Figure 3.

Based on the Dickmann Statement, Youngshine is thus also able to demonstrate that Amherst is currently technically precluded from receiving a first or second NCE service in the reserved band.

¹² 47 C.F.R. §§ 73.207, 73.313.

¹³ Sections 73.313(e) and 73.211(a) of the Commission's rules establish that the minimum facilities of a Class A FM station permit operating with an antenna that may be located at 30 meters HAAT and 0.1 kW ERP. 47 C.F.R. §§ 73.313(e), 73.211(a).

III. Conclusion

Youngshine has demonstrated satisfaction of each of the criteria set forth in the Second NCE FM Report and Order. Specifically, the operation of a new NCE FM station on Channel 221A in Amherst, NY will provide persons within its service area with a sufficient level of second NCE FM service. In addition, as provided in the Dickmann Statement, it is not technically feasible for Amherst to receive NCE FM service from a channel in the reserved FM band. Grant of the instant petition is therefore in the public interest.

Respectfully submitted,

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Dated: November 21, 2003
161136.1

TECHNICAL EXHIBIT
IN SUPPORT OF
A PETITION FOR RULE MAKING
TO RESERVE FM CHANNEL 221A
FOR NONCOMMERCIAL, EDUCATIONAL USE
AT AMHERST, NEW YORK

Technical Narrative

This technical narrative and associated exhibits have been prepared in support of a Petition for Rule Making to amend Section 73.202(b) by designating the channel 221A allotment at Amherst, New York for noncommercial, educational ("NCE") use. The requested change is in accordance with the criteria established in the Second Report and Order ("Second R&O") in MM Docket No. 95-31 and is filed in response to the Public Notice (DA 03-2990) announcing an open window for such filings with respect to certain vacant FM allotments. The channel 221A allotment at Amherst, New York appears in Appendix A to the Public Notice.

Need for New NCE Service

Figure 1 demonstrates that the proposed reservation of channel 221A for NCE service meets the first criteria for such a reservation as established in the Second R&O. As can be seen in this figure, the 60 dBu contour for a maximum class A facility at the allotment reference coordinates will provide a second NCE FM service to 330,135 persons which is more than the minimum of 2,000 persons as established in the Second R&O and more than ten percent of the 1,019,224 persons within the predicted 60 dBu service area.

Technical Preclusion Showing

Based on the criteria established in the Second R&O, it can be demonstrated that the proposed reservation of channel 221A at Amherst, New York meets the Commission's criteria for a rebuttable presumption of technical preclusion since, based on these criteria, use of a non-commercial, educational, reserved-band channel for a same-class facility is precluded at Amherst.

The attached Figure 2 shows the boundaries of the community of Amherst along with the center point of that community, a 27-km reference circle about the center point (one km less than the class A reference distance of 28 km), and the four points on that reference circle used to establish the rebuttable presumption of technical preclusion. Attached as Figure 3 is a table summarizing the reasons that use of reserved-band channels is precluded at each of five points. The preclusions are based on the following assumptions:

- At the center point, the preclusion study is based on an assumed, minimum class A facility of 0.100 kW at 30 meters HAAT.
- At the four points on the 27-kilometer circle about Amherst, the preclusion study is based on an assumed, maximum class A facility of 6 kW ERP at 100 m HAAT.
- Circular polarization was assumed in all cases.

Methodology

Population counts are based on the 2000 US Census of Population and were performed by means of a computer program which sums the population of all US Census blocks having centroids within the specified boundary.

For the 20 reserved-band channels, technical preclusion was determined based on either prohibited overlap with another reserved-band station based on the criteria of 47 CFR 73.509, or, in the case of channels 218, 219 and 220, failure to meet the separation requirements to commercial stations based on the criteria of 47 CFR 73.207. In the cases involving Canadian stations or allotments, the provisions of the US/Canadian FM agreement with respect to required separation distance and/or contour overlap were applied to determine if preclusion occurred.

The predicted coverage, protected and interfering contours for all U.S. stations were calculated in accordance with the provisions of 47 CFR 73.313. In accordance with current FCC practice, no consideration was given to terrain roughness correction factors. The average terrain elevations

from 3 to 16 kilometers from the proposed site along the 36 radials, evenly spaced at 10-degree intervals were determined using the N.G.D.C. 3-second terrain database.

The antenna radiation center heights above average terrain in the individual radial directions and the corresponding effective radiated powers were used in conjunction with the F(50,50) and F(50,10) curves of 47 CFR 73.333 (Figure 1 and Figure 1a) to determine distances to the coverage, protected and interfering contours.

The provisions of the US/Canadian FM agreement were used to determine distances to Canadian FM station contours where appropriate.

Proposed Change in Table of Allotments

Accordingly, Petitioner requests modification of the FM table of allotments (47 CFR 73.202(b)) as follows:

<u>City</u>	<u>Present</u>	<u>Proposed</u>
Amherst, NY	221A	*221A


*reserved for non-commercial, educational use



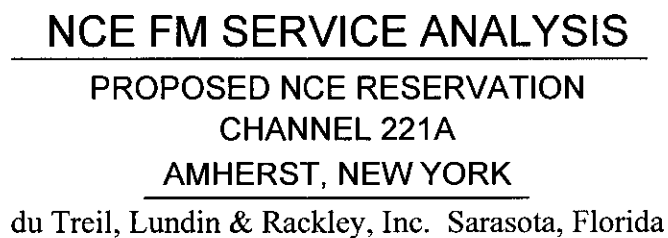
David E. Dickmann

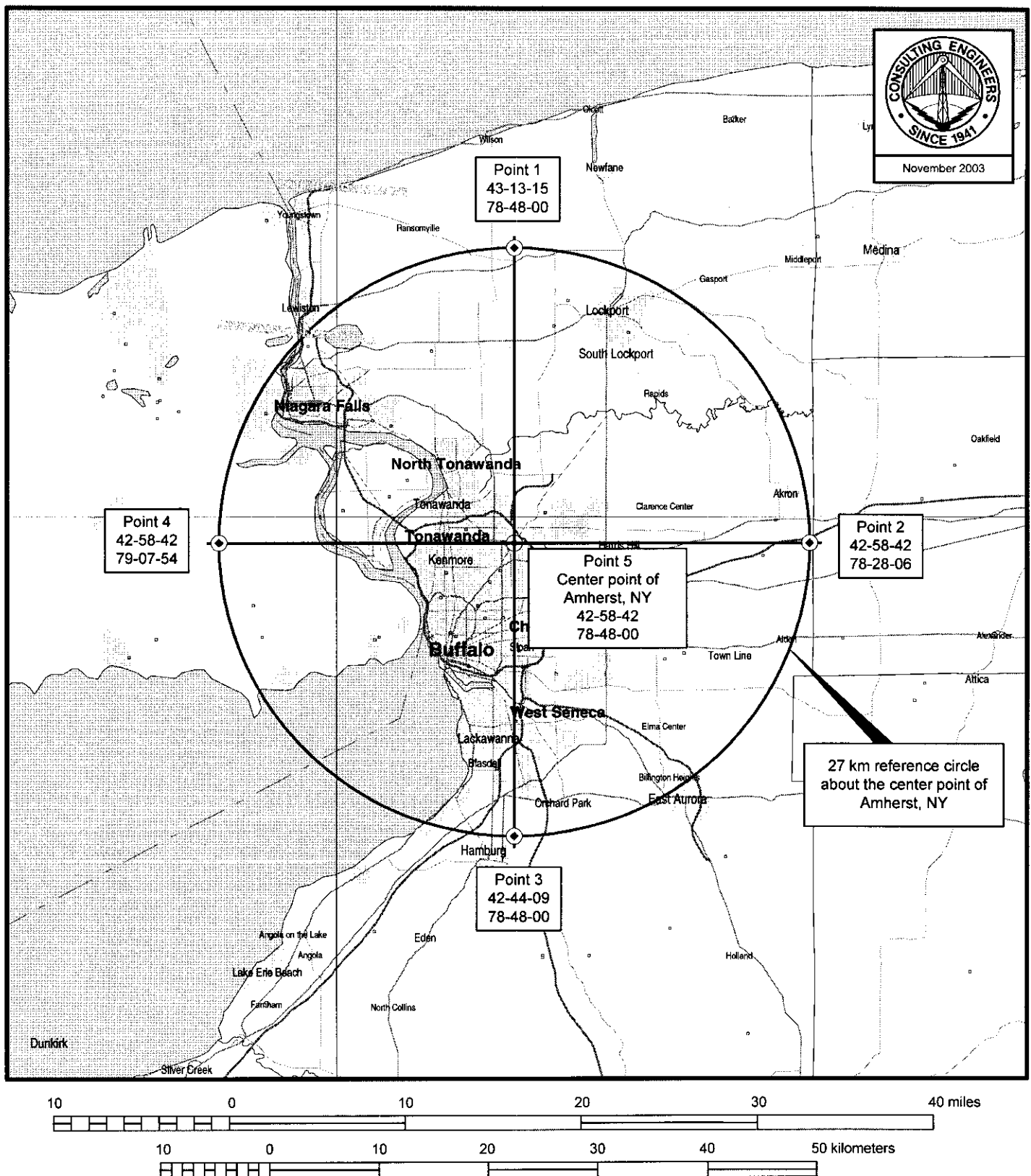
du Treil, Lundin & Rackley, Inc.
201 Fletcher Avenue
Sarasota, Florida 34237-6019
(941)329-6000

November 18, 2003



November 2003





CLASS A REFERENCE CIRCLE

PROPOSED NCE RESERVATION
CHANNEL 221A

AMHERST, NEW YORK

du Treil, Lundin & Rackley, Inc. Sarasota, Florida

Technical Preclusion Analysis
CH 221A Amherst, New York

Reserved- Band Channel	Reason for Preclusion									
	Point 1		Point 2		Point 3		Point 4		Point 5	
	Station	Reason	Station	Reason	Station	Reason	Station	Reason	Station	Reason
201	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap	Point 4 is located in Canada		WBFO	60/100 dBu overlap
202	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap			WBFO	60/100 dBu overlap
203	WBFO	60/54 dBu overlap	WBFO	60/54 dBu overlap	WBFO	60/54 dBu overlap			WBFO	60/54 dBu overlap
204	WBFO	60/40 dBu overlap	WBFO	60/40 dBu overlap	WBFO	60/40 dBu overlap			WBFO	60/40 dBu overlap
205	WBFO	60/54 dBu overlap	WBFO	60/54 dBu overlap	WBFO	60/54 dBu overlap			WBFO	60/54 dBu overlap
206	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap			WBFO	60/100 dBu overlap
207	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap	WBFO	60/100 dBu overlap			WBFO	60/100 dBu overlap
208	CIUT-FM*	54/34 dBu overlap	WCOF	60/40 dBu overlap	WFBB	60/100 dBu overlap			CIUT-FM*	54/34 dBu overlap
209	WFBB	60/54 dBu overlap	WFBB	60/54 dBu overlap	WFBB	60/54 dBu overlap			WFBB	60/54 dBu overlap
210	WFBB	60/40 dBu overlap	WFBB	60/40 dBu overlap	WFBB	60/40 dBu overlap			WFBB	60/40 dBu overlap
211	WFBB	60/54 dBu overlap	WFBB	60/54 dBu overlap	WFBB	60/54 dBu overlap			WFBB	60/54 dBu overlap
212	Allot. 212B Toronto*	54/34 dBu overlap	WJSL	60/40 dBu overlap	WFBB	60/100 dBu overlap			Allot. 212B Toronto*	54/34 dBu overlap
213	APP CH214A Williamsville	60/54 dBu overlap	APP CH214A Williamsville	60/54 dBu overlap	WFBB	60/100 dBu overlap			APP CH214A Williamsville	60/54 dBu overlap
214	APP CH214A Williamsville	60/40 dBu overlap	APP CH214A Williamsville	60/40 dBu overlap	APP CH214A Williamsville	60/40 dBu overlap			APP CH214A Williamsville	60/40 dBu overlap
215	APP CH214A Williamsville	60/54 dBu overlap	APP CH214A Williamsville	60/54 dBu overlap	APP CH214A Williamsville	60/54 dBu overlap			APP CH214A Williamsville	60/54 dBu overlap
216	WBNY	60/54 dBu overlap	WBNY	60/54 dBu overlap	WBNY	60/54 dBu overlap			WBNY	60/54 dBu overlap
217	WBNY	60/40 dBu overlap	WBNY	60/40 dBu overlap	WBNY	60/40 dBu overlap			WBNY	60/40 dBu overlap
218	WBNY	60/54 dBu overlap	WBNY	60/54 dBu overlap	WBNY	60/54 dBu overlap			WBNY	60/54 dBu overlap
219	Allot. 221A Amherst, NY	short spaced	Allot. 221A Amherst, NY	short spaced	Allot. 221A Amherst, NY	short spaced			Allot. 221A Amherst, NY	short spaced
220	Allot. 221A Amherst, NY	short spaced	Allot. 221A Amherst, NY	short spaced	Allot. 221A Amherst, NY	short spaced			Allot. 221A Amherst, NY	short spaced

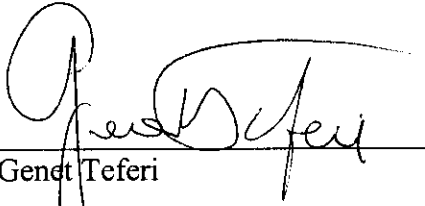
*Pursuant to US/Canadian FM Agreement.

Figure 3

CERTIFICATE OF SERVICE

I, Genet Teferi, a secretary at the law firm of Fleischman and Walsh, L.L.P., hereby certify that a copy of the foregoing "Petition for Rulemaking" was served this 21st day of November, 2003, via hand delivery, upon the following:

Rolanda F. Smith
Audio Division – Media Bureau
Federal Communications Commission
Room 2-B450
445 12th Street, S.W.
Washington, D.C. 20554


Genet Teferi